
In the Matter of the Compensation of
GILBERT E. VILCA-INGA, Claimant
WCB Case No. 21-02729
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Ogawa and Ousey.

Claimant requests review of Administrative Law Judge (ALJ) Smith's order that upheld the SAIF Corporation's denial of his new or omitted medical condition claim for conversion disorder. In his appellant's brief, claimant requests remand for a new hearing based on alleged bias. On review, the issues are remand and compensability.

We adopt and affirm the ALJ's order with the following supplementation to address claimant's request for remand.¹

Contending that the ALJ was biased, claimant requests remand for a new hearing with a new ALJ. Based on the following reasoning, we find that remand is not appropriate.

Claimant asserts that the ALJ was biased because he found that Dr. Ugalde's opinion was unpersuasive for reasons not specifically articulated in SAIF's closing argument.² However, if claimant believed that the ALJ was biased, it was incumbent upon him to have objected and requested a change of ALJ at the hearing level. *See* OAR 438-006-0095(5); *Penelope A. Camarata*, 58 Van Natta 2283, 2284 (2006) (it was incumbent on the claimant to have objected to alleged bias at the hearing level); *Chris Rowe*, 56 Van Natta 1866, 1866-67 (2004) (same). Claimant did not do so. Therefore, claimant's request at this stage of litigation is untimely. *See* OAR 438-006-0095(5); *Camarata*, 58 Van Natta at 2284 (the claimant's objection based on alleged bias raised for the first time on review was untimely); *Rowe*, 56 Van Natta at 1866-67 (same).

¹ We adopt the ALJ's reasoning and conclusions regarding the compensability issue.

² The ALJ found that Dr. Ugalde's opinion was unpersuasive because it was conclusory, not well explained, internally inconsistent, and did not adequately address the appropriate "consequential condition" standard or sufficiently respond to Dr. Wicher's opinion that claimant's presentation was likely due to unrelated psychological factors.

Nevertheless, even assuming that claimant's objection was timely, we are statutorily authorized to make our own appraisal of the evidence, as was the ALJ. *See Camarata*, 58 Van Natta at 2284; *Rowe*, 56 Van Natta at 1867. Here, on *de novo* review, we find no compelling reason to return this case to the Hearings Division for a new hearing before a new ALJ. SAIF's closing argument does not limit or control the ALJ's evaluation of the medical evidence.³ *See* ORS 656.283(6) (an ALJ is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct a hearing in any manner that will achieve substantial justice); *SAIF v. Strubel*, 161 Or App 516, 521-22 (1999) (the persuasiveness of a medical opinion is evaluated in context and based on the record as a whole); *Hugh J. O'Donnell*, 51 Van Natta 1394, 1394 n 1 (1999) (the factfinder determines the persuasiveness of the evidence; the parties' arguments are not controlling); *Edison L. Netherton*, 50 Van Natta 771, 772 (1998) (same). Rather, the ALJ was free to evaluate the persuasiveness of Dr. Ugalde's opinion irrespective of the reasons articulated by SAIF. *See* ORS 656.283(6); *O'Donnell*, 51 Van Natta 1394, n 1; *Netherton*, 50 Van Natta at 772. Accordingly, we deny claimant's request for remand.

ORDER

The ALJ's order dated March 3, 2022, is affirmed.

Entered at Salem, Oregon on February 28, 2023

³ In addition, the parties raised compensability and more specifically, medical causation, as issues. (Hearing Record; Tr. I-2, Tr. II-2, -38-47). Further, the parties disputed the persuasiveness of Dr. Ugalde's opinion. (Tr. II-38-47).